

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 WALTER BANNER,
12 Petitioner,
13 v.
14 D.V.I.,
15 Respondent.
16

No. 2:20-CV-0563-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254. On April 28, 2020, the Court dismissed
19 Petitioner's petition and directed Petitioner to file an amended petition within 30 days which
20 names the correct respondent. Petitioner was warned that failure to comply may result in
21 dismissal of this action for lack of prosecution and failure to comply with court rules and orders.
22 See Local Rule 110. To date, Petitioner has not complied. In particular, the first amended
23 petition filed on May 26, 2020, ECF No. 11, continues to fail to name the correct respondent.

24 The Court must weigh five factors before imposing the harsh sanction of
25 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.
26 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's
27 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)
28 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
2 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
3 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
4 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
5 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
6 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
7 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
8 1260-61 (9th Cir. 1992).

9 Having considered these factors, and in light of Petitioner's failure to name
10 the correct respondent as directed, the Court finds that dismissal of this action is
11 appropriate.

12 Based on the foregoing, the undersigned recommends that this action be
13 dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and
14 orders.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court. Responses to objections shall be filed within 14 days after service of
19 objections. Failure to file objections within the specified time may waive the right to appeal.
20 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 Dated: July 26, 2021



23 DENNIS M. COTA
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28